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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1971.

No. 71-496

CLARENCE WARD,

Petitioner,

v.

VILLAGE OF MONROEVILLE, OHIO

Respondent.

ON WRIT OF CERTIORARI TO
THE SUPREME COURT OF OHIO

SUMMARY OF ARGUMENT

A mayor who presides over a mayor's court with a jurisdiction limited to violations within the municipal corporation of those ordinances that carry a maximum penal-

ty of a \$50.00 fine and no jail sentence represents a union of the executive power and inferior judicial function contemplated by this Court when it stated that such a union cannot be said to violate due process of law. Tumey v. Ohio, 273 U.S. 510 (1927).

A judge may be disqualified for bias under the provisions of Ohio Revised Code Section 2937.20, if an accused files an affidavit asserting the bias or disqualification. This protection was not sought by Petitioner Clarence Ward.

Any individual who believes that he did not receive a fair trial in a mayor's court has the right to a trial de novo in a county court or a municipal court. Any small expense or inconvenience associated with such a re-trial must be balanced against the much greater expense and

inconvenience that all persons must go through if they are required to go to traffic court (ie. county court or municipal court) during working hours, as opposed to a hearing in mayor's court during evening hours.

Even if this Court should find that Petitioner Clarence Ward did not receive a fair trial because of the bias of Mayor Salisbury, this Court should not make the leap in logic to the conclusion that all mayors are biased or interested in the outcome and therefore all mayor's courts must be abolished.

ARGUMENT.

- I. THE DECISION OF THE OHIO SUPREME COURT BELOW FOLLOWS THIS COURT'S HOLDING IN *TUMEY v. OHIO*, 273 U.S. 510 (1927).

The question presented in defendant's

petition may be resolved by an examination of two cases decided by this Court. This Court held that a mayor who received any portion of the fine or court costs levied in mayor's court violated the defendant's right to a fair trial, under the due process of law guaranteed by the Fourteenth Amendment to the United States Constitution. Tumey vs. Ohio, 273 U.S. 510 (1927). This Court also held that a mayor who was paid from a municipality's general fund did not violate the due process of law requirement, even though the convicted party paid his fine and court costs into the same general fund from which the mayor's salary was paid. Dugan v. Ohio, 277 U.S. 62 (1928).

This Court gave a secondary reason for finding that due process had been offended

by the mayor's court in Tumey, supra.

Mayor's courts were given jurisdiction over offenders who were apprehended outside of the municipality's corporation limits. This extension of normal venue and jurisdiction was coupled with an extremely high rate of fines for offenders as a means of encouraging small municipalities to go outside of their corporate boundaries to apprehend and convict violators of the prohibition act. The high rate of fines encouraged the mayors to convict offenders, in order to recoup the cost of conducting investigations and making raids outside of the corporation limits.

This Court condemned this extension of jurisdiction of mayor's courts in the following terms:

"The statutes were drawn to stimulate small municipalities in the country part of counties in which there are large cities, to organize and maintain courts to try persons accused of violations of the prohibition act everywhere in the county." Tumey, supra, at 533.

This clear condemnation of a novel situation was accompanied by an equally clear statement of approval of the normal operation of mayor's courts:

"It is, of course, so common to vest the mayor of villages with inferior judicial functions that the mere union of the executive power and the judicial power in him cannot be said to violate due process of law." Tumey, supra, at 534.

The mayor's court in Ohio has an inferior judicial function, within the purview of Tumey. The Ohio legislature is empowered to establish courts inferior to the Ohio Supreme Court, under the provision of the Ohio Constitution, Article IV, Section 1. The Ohio legislature has adopted

R.C. 1905.01, establishing mayor's courts. Under R.C. 1905.01, a mayor is disqualified from hearing a criminal case in which the accused is entitled to a jury trial. State ex rel Williams v. Ferris, 102 O. App. 412, 140 N.E. 2d 901 (1956). Since any potential fine of more than \$50.00, or, any potential jail sentence entitles an accused to a jury trial under the provisions of R.C. 2945.17, the mayor's court has a jurisdiction limited to violations of ordinances that carry a maximum penalty of a \$50.00 fine and no jail sentence.

In considering this Court's holdings in Tumey and Dugan, in the light of the limited jurisdiction of Ohio mayor's courts, the Ohio Supreme Court below rendered the following majority opinion:

"We are of the opinion that even

though the revenue produced from a mayor's court provides a substantial portion of a municipality's funds, such fact does not mean that a mayor's impartiality is so diminished thereby that he cannot act in a disinterested fashion in a judicial capacity. The same may be said in connection with a mayor's interest in law enforcement within the municipality." Monroeville v. Ward, 27 Ohio St. 2d 179 (1971), at 185.

If the Ohio Supreme Court did not correctly follow this Court's holding in Turney, as applied to the facts below, it might be grounds for reversal in the instant case, but it should not be grounds for abolishing all mayor's courts in Ohio. The Respondent submits, however, that the decision of the Ohio Supreme Court below correctly follows this Court's holding in Turney.

II. THE OHIO STATUTORY PROVISION FOR DISQUALIFYING A JUDGE FOR BIAS IS AN ADEQUATE FAIR TRIAL PROTECTION FOR DEFENDANT.

Although the Ohio Supreme Court re-

fused to abolish mayor's courts, the majority opinion below pointed out that the interest, bias, prejudice or disqualification or an individual mayor would be grounds for the appointment of another judge to hear the case, if the defendant filed an affidavit asserting the disqualification under the terms of R.C. 2937.20. Monroeville v. Ward, supra, at 184.

Ward filed such an affidavit, but based his disqualification of Mayor Salisbury on the constitutional question that Ward is asserting before this Court, instead of upon any of a number of possible disqualifications that could have resulted in another judge hearing Ward's case. Ward obviously was interested in raising a constitutional issue for review by this Court, as opposed to disqualifying Mayor Salisbury

at his hearing. Ward could have shown that Mayor Salisbury knew about his traffic convictions on other occasions or about Ward's prison record. Ward could have shown that Salisbury had prior knowledge about the fight between Ward and the arresting officer. Other grounds for an affidavit to disqualify Mayor Salisbury might have been discovered and asserted by Ward, if he were interested in disqualifying Mayor Salisbury, as opposed to abolishing Mayor's Courts.

Whatever the failings of Mayor Salisbury, it is illogical to conclude that all mayors have the same or similar failings and, therefore, that mayor's courts should be abolished. It is equally illogical to conclude that all towns have a high rate of flow of traffic through the towns and a high incidence of traffic revenue through

the mayor's court.

The failure of Ward to testify at his hearings has eliminated an important source of information concerning prior treatment of Ward by the Monroeville Police Department or by the Monroeville Mayor's Court. Nevertheless, one is tempted to speculate that Ward would have succeeded easily if his move to disqualify Mayor Salisbury were based upon bias against Ward, as opposed to the constitutional question that Ward used as the basis of his motion to disqualify Mayor Salisbury.

III. THE OHIO STATUTORY PROVISION FOR TRIAL DE NOVO ON APPEAL FROM A MAYOR'S COURT IS AN ADEQUATE FAIR TRIAL PROTECTION FOR DEFENDANT.

If it appears during the course of a trial that a particular defendant is not receiving the fair trial that is guaranteed by the fourteenth amendment to the United

States Constitution, the defendant has the right to appeal from the decision of the mayor's court to a county court or a municipal court for a trial de novo, under the provisions of R.C. 1905.25 and 1905.22.

Prior to June 12, 1970, such a right to a trial de novo existed in the common pleas court. It is obviously less expensive and less delay to re-try a case in municipal court or county court, as opposed to common pleas court. This is an indication as recently as 1970 that the Ohio legislature is interested in retaining mayor's courts, while affording a curb on the potential abuse by any individual mayor.

If mayor's courts were abolished in Ohio, the only courts with jurisdiction to handle traffic violations would be municipal courts and county courts. The defendant

already has the right to appeal to these courts for a trial de novo, from a decision in the mayor's court. The only effect of abolishing mayor's courts would be to make all accused persons go to the expense and trouble of traveling to a municipal court or a county court to have their traffic citation adjudicated. The Monroeville Mayor's Court holds sessions on week nights, as do almost all mayor's courts in Ohio. The County Courts and Municipal Courts uniformly hold sessions during the daytime, thus forcing any person who wishes to appear to miss work in order to appear before the court. Any small expense or inconvenience associated with a few individuals seeking a re-trial of their case on appeal from mayor's court to municipal court or county court should be balanced against the much

greater expense and inconvenience that all traffic offenders would have to undertake if mayor's courts are abolished.

Respondent Village of Monroeville respectfully submits that the existing right to a trial de novo in a county court or a municipal court is a sufficient fair trial guarantee for any defendant who believes that his individual case was not fairly tried in mayor's court.

IV. DEFENDANT'S ATTACK ON THE SYSTEM OF MAYOR'S COURTS IN OHIO IS BASED UPON A FALSE PREMISE.

Much of the case for the defendant is based upon the false premise that a mayor is so interested in ingratiating himself with the electorate by high fine revenues and low taxes that the mayor cannot be fair and impartial in his adjudication of traffic cases. The facts of political life are exactly the contrary.

The election for mayor of a village is a bi-partisan election. The office of mayor carries a rate of compensation that varies from community to community, but usually amounts to several hundred dollars per annum. Village Council must approve appointments made by the mayor and must fix all compensation for employees of the municipality.¹

Pursuant to R.C. 737.171, the mayor can remove the chief of police only after a public hearing before village council, with a two-thirds majority of council concurring in the removal.

1-"Each village shall have a marshal, designated chief of police, appointed by the mayor with the advice and consent of the legislative authority..."
Revised Code Section 737.15.

"The legislative authority of a village shall fix the compensation and bonds of all officers, clerks, and employees of the Village..."
Revised Code Section 731.13.

The legislative authority guards its prerogative very jealously, and the defendant grossly misrepresents the facts of political life if he is asking this Court to believe the mayor runs a village.

The fact is that the mayor does not convict innocent traffic offenders, just because he is worrying about re-election. There simply are neither political plums nor financial plums to be picked in a small municipality in the office of mayor.

CONCLUSION

This Court should affirm the decision of the Ohio Supreme Court below, since the allegations of Ward relate only to one specific mayor's court and since the statutory protections, if the defendant avails himself of their protection, are more than sufficient to assure a fair trial.

In the alternative, if this Court should find that Ward did not receive a fair trial in the Monroeville Mayor's Court, then the decision should be reversed, but the system of mayor's courts should not be abolished.

Wherefore, it is respectfully urged that the judgment below be affirmed.

Franklin D. Eckstein,
Solicitor,
Village of Monroeville, Ohio

Joseph F. Dush,
Assistant Solicitor
Village of Monroeville, Ohio
DUSH & ECKSTEIN
110 1/2 Myrtle Ave.
Willard, Ohio
44890

Counsel for Respondent

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